

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-7086

In The
United States Court of Appeals
For The Second Circuit

CHESA INTERNATIONAL, LTD.,
Plaintiff-Appellee,

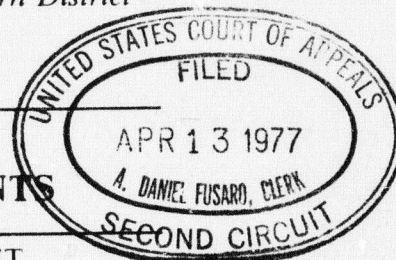
vs.

FASHION ASSOCIATES, INC.; HONG KONG QUALITY
KNITTERS, LTD.; and JEROME FINKELSTEIN;
Defendants-Appellants.

*On Appeal from United States District Court, Southern District
of New York.*

**BRIEF AND APPENDIX
FOR DEFENDANTS-APPELLANTS**

ROBERT L. RATTET
Attorney for Defendants-Appellants
344 Central Avenue
Scarsdale, New York 10582
(914) 725-5932



On the Brief:

SIEGMAR SILBER
126 Market Street
Paterson, New Jersey 07505
(201) 881-1357

10604

LUTZ APPELLATE PRINTERS, INC.

Law and Financial Printing

South River, N.J. New York, N.Y. Philadelphia, Pa. Washington, D.C.
(201)257-6850 (212) 563-2121 (215) 563-5587 (202) 783-7288

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

I. Statement of the Issues Involved	1
II. Subsidiary Statements of Each Issue	2
III. Statement of the Case	3
IV. Argument	8
The "freely copyable" aspect of the design	8
The underlying trademark entity	9
The multiplicity of Givenchy marks	12
The Sears and Compco rationale	13
V. Conclusions	16
VI. Appendix	

ii
Contents

Page

TABLE OF CITATIONS

Cases Cited:

Compco Corp. v. Day-Brite Lighting, 376 US 234, 140 USPQ 528, 54 TMR 223 (1964).	9
Peter Pan v. Martin Wiener, Inc., 274 F.2d 487 (2d Cir. 1960)	13
Re Garrett [1916] 1 Ch. (Eng.) 436, 85 L.J. Ch. N.S. 350, 114 L.T.N.S. 976, 60 Sol. Jo. 401, 33 Rep. Pat. Cas. 117	12
Registrar v. W. & G. DuCros, [1913] A.C. (Eng.) 624, 83 L.J. Ch. N.S. 1, 109 L.T. N.S. 687, 29 Times L.R. 772, 57 Sol. Jo. 728, 30 Rep. Pat. Cas. 660, 51 Scot. L.R. 588, modifying [1912] 1 Ch. 644, 81 L.J. Ch. N.S. 201, 105 L.T.N.S. 890, 29 Reg. Pat. Cas. 63	11
Rogers v. Ercona Camera, 124 USPQ 489 .	11
Sears, Roebuck & Co. v. Stiffel Company, 376 U.S. 225, 140 U.S.P.Q. 524, 54 TMR 217 (1964)	13, 14

Statutes Cited:

15 U.S.C. §1117	17
35 U.S.C. §102	8

iii
Contents

Page

Other Authorities Cited:

- "The Protectability of Package, Container
and Product Configurations" in 6 Univ.
of San Francisco L.J. 172 (October, 1971). 14

APPENDIX

Page

A -1	Certified copy of the Docket Sheet (Items A through C of the Index to the Record on Appeal (RA)).	1a
A 2	Exhibit BZ1 Affidavit to Bruce Zimberg RA Document No. 4.	6a
A-3	Paragraphs number 1, 2 and 3 of Agreement between Givenchy S. A. and Chesa International, Ltd, exhibit to transcript RA Document No. 3.	7a
A-4	Special Master's report dated September 9, 1976 ^{not} reproduced here, Document No. RA 38)	9a
A-5	Final Judgment	10a
A-6	Opinion of Hon. Lloyd F. MacMahon, D.J.	12a

IN THE
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Court of Appeals Docket No. 77-7086

Chesa International, Ltd. v. Fashion Associates, Inc. et al

BRIEF FOR APPELLANT

I. Statement of the Issues Involved

1. Did Appellee have rights to the underlying trademark property and, if he did have such rights, are the marks of a nature which should be narrowly construed?
2. Did the Special Master act within the designated scope of inquiry?
3. Were the damages proper in view of the common-law nature of the alleged mark and the equitable relief granted to the appellee?

II. Subsidiary Statements of Each Issue

1. The trademark property rights issue.

A. Is the "4G" design a statutorily protectable property that has fallen into the public domain?

B. If arguendo the trademark property right exists as a common-law right, does the right extend to all those marks exhibited? Which one is the real Givenchy mark?

C. As a monogram design, is that mark or group of marks entitled to common-law trademark protection to be narrowly construed?

D. Has the Sears and Compco rationale changed the scope of unfair competition protection afforded designs within common-law trademark area?

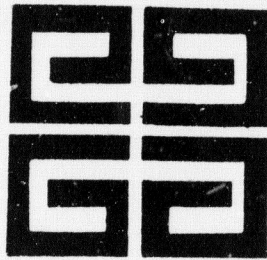
2. The scope of Special Master's inquiry issue.

A. Did the Special Master exceed his authority in determination of damages when he ruled on the confusingly similar aspects of the plaintiff's and defendant's marks?

B. Was the request that Interrogatories 1, 4 and 13 be stricken, reasonable in light of the nature of the ladies' sportswear manufacturing trade practices?

III. Statement of the Case

This case relates to sportswear for women, and more particularly women's T-shirts. On July 28, 1975, the United States District Court, Southern District of New York, found that Givenchy, S. A. had common-law trademarks in several emblems consisting of four G's, which are reproduced below:



The plaintiff-appellee, Chesa International, Ltd. (hereinafter "Chesa"), alleged that the trademark was licensed to it and infringed by a defendant-appellant, Fashion Associates, Inc. A preliminary injunction against that defendant-appellant was issued on the same day.

A permanent injunction was entered on October 21, 1975 on consent. It enjoined Fashion Associates et al from using the four-G emblem.

The Court below held that the order was violated by the defendants-appellants upon the sale by Hong Kong Quality Knitters, Ltd., of a two-G emblem formed from squared G's.

On June 9, 1976, the same lower Court:

- (a) held defendants-appellants in contempt of Court;
- (b) amended the judgment of October 21, 1975 so as to provide damages that Chesa had waived; and

- (c) appointed Douglas F. Eaton, Esq. as a Special Master, and directed him to determine the damages by way of:

- (1) the profits made by the defendants-appellants from the aforementioned sales from October 21, 1975 through June 9, 1976 (or Chesa's loss of anticipated profits, if greater); and

- (2) the profits made by Fashion Associates, Inc. from the infringing sales prior to October 21, 1975 (or Chesa's loss of anticipated profits, if greater).

In the proceedings before the Special Master, Chesa elected to prove the defendants' profits, rather than its own loss of profits. After extensive discovery and hearings, the Special Master filed his report with the Court on September 10, 1976. The Special Master found that the plaintiff had sustained damages of \$18,105.00 based on defendant Fashion Associates' profits on sales of T-shirts bearing the "G" emblem prior to October 21, 1975,

plus \$2, 586. 00 based on all defendants' profits on their sales from October 21, 1975 through June 8, 1976. The Special Master also recommended the imposition of sanctions under Rule 37(b) (2) (B) and the award of certain of Chesa's attorneys' fees in the amount of \$2, 885. 00.

After defendant-appellant filed Objections to the Report, dated September 14, 1976 and Chesa filed their Motion to Confirm the Report, dated October 8, 1976, an Opinion was prepared by Lloyd F. Mac Mahon, United States District Judge. The Opinion issued on January 24, 1977 and was reduced to the Final Judgment in due course from which this appeal is taken.

The Special Master disregarded the position taken by counsel below that certain small portions of the discovery were beyond the scope of the Court-directed inquiry as to damages. The defendant-appellant's counsel took the position that the information requested by the Master to wit questions 1, 4 and 13 was in excess of his jurisdiction in that the Master's jurisdiction was limited to those customers and embroiderers who were involved with Chesa's marks. At no time did counsel ever state that he would not supply the balance of items requested, but did point out that his clients were having difficulty coming up with the requested information. Counsel did request that any proposed sanctions be held in abeyance until the opportunity existed to provide all the information. Subsequently, the Special Master prepared the aforementioned report calling for sanctions against defendant-appellant which sanctions were later granted and incorporated into the judgment of the Court below.

In the Court below, testimony was received from Jerome N. Finkelstein, one of the named defendants, that in the jargon of the trade he "knocked off" or copied the design as was customary in the industry. Thus, once high-fashion houses introduce a design or style, without in some way reserving the said design or style, the trade practice is to copy freely and sell "knock-offs" to other marketplaces than those served by the name designers. The testimony includes responses as follows [Transcript, pp. 68, 71, and 72; RA Document No. 13]:

Q You never told any of your customers that the T-shirts you manufactured and sold were manufactured or designed by Givenchy, did you?

A We never made a representation to that effect.

Q Did you tell them they were manufactured by Givenchy?

A No, sir.

Q Did you tell them they were manufactured by the Plaintiff[Chesa]?

A No, sir...

[at 71] Q Is it not correct that the primary similarity between these two T-shirts, Plaintiff's Exhibit 1 and Defendant's Exhibit B, is the Givenchy trademark?

A I don't know this to be a Givenchy trademark. I can't answer. I knocked off a design. I am not testifying that its a Givenchy Trademark.

Q You are testifying that these two T-shirts are designed similarly, is that right?

A I knocked off a style. I did not knock off a trademark. I don't know that this is a trademark.

The Court further upon issuing the preliminary injunction concluded, "There can be no doubt about that [referring either to tending to confuse the purchasing public or to trademark infringement]. Indeed the very ad from which the Defendant [Fashion Associates] copied the design . . . has the word Givenchy, he did that last March."

IV. Argument

The "freely copyable" aspect of the design.

The mark shown in the case at hand is a fanciful ornamentation used on clothing as a decoration applied to the breast pocket or breast portion of the garment, specifically a tee shirt or related item. It is argued that the fanciful ornamentation is a design element of the goods, and, as a nonfunctional aspect thereof, the design is statutorily protectable under either the patent or the copyright laws. In the case of the copyright law public use of the artwork without reservation of rights destroys protection thereunder and leads to an entity which becomes "freely copyable." The patent law as it pertains to designs give rise to statutory bars pursuant to 35 U.S.C. §102 in particular where there is a prior public during a specific time period before filing of the application. The design statutorily barred from the qualifying as an application is within the public domain and is usable by all.

It is ceded for the purpose of argument that in the design area, patent, trademark and copyright laws overlap and potentially provide co-existing properties. However, it is heretofore undecided whether a design which gives rise to a freely copyable form can then gain protection as a common-law trademark. Combinations of design patent/trademark protection wherein the limited monopoly of the design patent is extended by the regis-

tration of a design-type trademark has been found permissible, however, the distinction in law between this situation and the case at hand is clear. Here there is a dedication to the public subverted by a claim of common-law trademark.

Such action is proscribed by Compco Corp. v. Day-Brite Lighting, 376 US 234, 140 USPQ 528, 54 TMR 223 (1964) wherein the Supreme Court (at p. 237) reasons that a state under unfair competition laws may not forbid copying. For a state "to forbid copying would interfere with the federal policy... of allowing free access to copy whatever the federal patent and copyright laws leave in the public domain."

Further, it is urged that that where the plaintiff-appellee is a large, high-fashion designer with sophisticated marketing organization and similarly sophisticated intellectual property advisers, if the design were suitable subject matter for such protection, it would have been protected. Then, the clouding of property rights by a design in the public domain would not arise.

The underlying trademark entity

Appellee has alleged in his memorandum of law that the Lanham Act definitions of trademarks apply equally to registered and unregistered trademarks. Assuming that the classic definition of "appropriation and use by merchant or manufacturer" to be one which approximates the Lanham

Act definition, there are still unresolved problems as to the posture of Givenchy S. A. toward the United States market.

In the United States, a common-law trademark arises when a business organization places items into commerce within the jurisdiction using the mark in question. Conversely, if Hubert de Givenchy ensconced in his atelier in Paris or Milan creates a design consisting of four G's in a rectangle (hereinafter referred to as "4G") and further creates a French or Italian trademark property, that property is not licensable to a United States business organization. The common-law existence of the "4G" mark in the United States as a property belonging to Givenchy S. A. only would arise only upon Givenchy S. A. marketing products under the mark in the United States. The presence within the United States of Givenchy S. A. has not been shown, and, while the designer-house has an international flavor, common-law trademarks flow to entities operating within jurisdictions, not to those outside the mercantile establishment. Chesa International, Ltd., has not borne the burden that the trademark existed in the United States prior to their agreement with Givenchy S. A. as their United States representative and agent, and the representation to the Court of a licensee status is unclear. The establishment of a trademark follows use and appropriation thereof. Givenchy S. A. cannot grant by way of license more than that organization possesses. As no operation of Givenchy S. A. within the U. S. has been alleged, but only that of Chesa International Ltd,

their licensee: thus clearly the property right could not have arisen. The contract of license from Givenchy S. A. to Chesa International Ltd. is clearly nugatory.

Reference is made to the case of Rogers v. Ercona Camera, 124 USPQ 489, in which the Court of Appeals for the District of Columbia held that trademarks exist only as appurtenance to manufacturing or marketing business within the United States [Emphasis supplied].

In common-law matters it is popular to look toward English decisional law as a guide. While under earlier English trademark rulings (18th and 19th Century) initials were held to be valid trademarks, the modern English rule seems to be to the contrary. Thus, in Registrar v W. & G. DuCros [1913] A. C. (Eng.) 624, 83 L. J. Ch. N.S. 1, 109 L. T.N.S. 687, 29 Times L. R. 772, 57 Sol. Jo. 728, 30 Rep. Pat. Cas. 660, 51 Scot. L. R. 588, modifying [1912] 1 Ch. 644, 81 L. J. Ch. N.S. 201, 105 L. T.N.S. 890, 29 Rep. Pat. Cas. 63, it was held that the initial letters of the Christian names of partners, namely, "W. & G.," could not be registered under the English Trademarks Act of 1905. This was upon the theory that the mark was not sufficiently distinctive, and that its registration might seriously embarrass others of similar initials, who might wish to use the same in marking their goods with their initials. However, Lord Shaw remarked that had the applicants used their full initials, "W. & G. Du C.," the whole

action might have had a different complexion." And again, in Re Garrett [1916] 1 Ch. (Eng.) 436, 85 L.J. Ch. N.S. 350, 114 L.T.N.S. 976, 60 Sol. Jc. 401, 33 Rep. Pat. Cas. 117, it was held that the initials "O.G." were not subject to registration, the argument being that "the practice in trade of using the initials of firms was so hardened that they did not amount to distinctive marks," and that "to grant the exclusive use of any letters to any trader would be oppressive."

In addition to the above comment, a cursory review of the registered trademark files of the clothing class at the Patent and Trademark Office yield examples of single, double and three "G" monogram designs. ~~(See Appendix 1.)~~ Existence of such marks gravitates toward the point of view that if a common law trademark does in fact exist, it should be strictly construed.

The multiplicity of Givenchy marks.

In the Affidavits of Bruce Zimberg and of Mrs. Elieth Roux, Exhibit BZ-1, reproduced for convenience herewith as Appendix 2, no fewer than four different designs are shown as samples of "Givenchy for Chesa" products. Having a plurality of designs or emblems supports the above contention that this Givenchy design work is of a nonfunctional, ornamental level protectable by statutory means and, if not so protected,

falling within the public domain. It is further noteworthy in this regard that information in Zimberg's Exhibits BZ-2 through BZ-6 showing advertisements for the Tee shirts and blouses refer to the designs as signatures, hallmarks or monogram, but not as trademarks. An aside here is that the interlocking G print and the "all over" double G pattern lend themselves to the textile copyright protection as was the subject matter for the United Merchants and Manufacturers cases and Peter Pan v. Martin Wiener, Inc. 274 F. 2d 487 (2d Cir. 1960). It is urged that the multiplicity of designs weakens the plaintiff-appellee's position that all such designs are common-law trademarks and strengthens the defendant-appellant's position that the designs are in the public domain, for, if all the "4G" designs are trademarks, then which one stands for Givenchy S. A.

The Sears and Compco Rationale

The question as to whether the common law area remains unchanged by the Sears [Sears, Roebuck & Co. v. Stiffel Company, 376 U.S. 225, 140 U.S.P.Q. 524, 54 TMR 217 (1964); hereinafter referred to as Sears] and Compco, supra, cases is treated extensively in the legal literature. The issue which is applicable here was stated in Sears as:

[W]hether a State's unfair competition law can,

consistently with the federal patent laws, impose liability for or prohibit the copying of an article which is protected by neither a federal patent nor a copyright.

The Supreme Court settled this issue unequivocally by holding that to extend relief for copying alone is to do violence to the statutory scheme created by Congress for the protection of designs and to "block off from the public something which federal law has said belongs to the public," Sears, at 232.

In commenting on this aspect of the Sears and Compco rationale, G. R. Sprotling in his article entitled, "The Protectability of Package, Container and Product Configurations" in 6 Univ. of San Francisco L.J. 172 (October, 1971) states:

The rule of the Sears and Compco opinions is clear. The states cannot go beyond labeling and similar precautions to cure the principles which permitted state prohibition of copying nonfunctional features of unpatented articles which had acquired secondary meaning. Gone are the principles of "old-fashioned honesty" and "commercial necessity" previously applicable in product simulation cases. Prior principles have been

discarded in favor of a single test under which a person who markets a copy of an unpatented product and does not go further to palm off the product as that of another, is no longer liable for state unfair competition.

By expressly recognizing the state interest in promoting product identification, the Sears and Compco decisions saved to the states their traditional power of curing consumer confusion as a result of product simulation; but by resting on preemption grounds, the decisions precluded state protection from product simulation from becoming a basis for acquiring monopoly powers similar to those conferred by the federal statutes.

Therefore without eliminating totally state common law trademark protection the ambit thereof is greatly curtailed in those states by virtue of unfair competition laws may not reserve to themselves that which is freely copyable under federal statutes.

V. Conclusions

1. The "4G" design is one which has fallen into the public domain and is thus freely copyable. Chesa under the Sears and Compco rationale cannot gain at common law what is not available to them under federal statutes relating to designs.

2. There is no support for the viewpoint that Givenchy S. A. established a common-law trademark in the United States or that Chesa is their trademark licensee.

3. There is no evidence that the defendant-appellant did any more than copy a design that was in the public domain. No use of the name "Givenchy" or "Chesa" is shown in the record. Merely that the freely copyable design was in fact copied.

4. The multiplicity of the "4G" designs buttresses the opinion that the design or emblem is a design element and not a unitary, strong trademark.

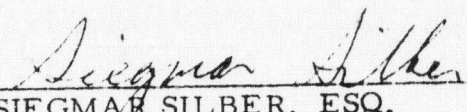
5. As there was a question whether the design was "freely copyable," if a common law trademark does in fact exist, then punitive damages are not assessable.

6. The Special Master exceeded his authority by giving his opinion during hearing as to the facts of colorable imitation.

7. If the trademark is actionable under the Lanham Act, then pursuant to 15 U.S.C. §1117 attorney's fees are not awardable.

The decision of the United States District Court for the Southern District of New York should be reversed.

Respectfully,


SIEGMUND SILBER, ESQ.
On the brief
for Appellants

DATED: March 31, 1977

A-1 CERTIFIED COPY OF THE DOCKET SHEET (ITEMS A THROUGH C OF THE INDEX TO THE RECORD ON APPEAL (RA)) (pp. 1a-5a)

1a

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE MAC MAHON

75 CIV. 3522

Jury demand date:

Form No. 108 Rev.

08-1 75 3522 TITLE OF CASE 07 18 75 3 840 1 9,999.

0834 ATTORNEYS MAC MAHON J.

For plaintiff:

CHESA INTERNATIONAL, LTD.

LADAS, PARRY, VON GEE, GOLDSMITH & DESCHAMPS
10 Columbus Circle
New York, New York 10019
245-2600

5/18

CONSOLIDATED FOR ALL PURPOSES WITH
76 Civ 1262 on 3-23-76

Vs.

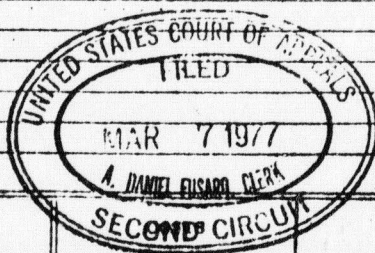
For defendant:

FASHION ASSOCIATES, INC.

Geiger & Geiger Esqs.
555 5th Ave. NYC 10017-687-6061

Robert Ratter
280 Park Ave. NYC 10017
687-3790

Douglas F. Eaton - Special Master
Suite 1909
745 Fifth Ave. NYC 10022
PL 9-1919



STATISTICAL RECORD

DATE NAME OR RECEIPT NO. REC. DR.

5 mailed x Clerk
6 mailed x Marshal
Basis of Action: Trademark infringement. \$1,000,000
Witness fees
Depositions

JUL 18 1975
7/7/76 72728
7/8/76 These

DATE	PROCEEDINGS	Date Order Judgment: N
18-75	Filed complt. and issued summons.	
21-75	Filed plttfs affdvts & Show cause order for a preliminary injunction. Ret. 7-21-75, Room 519, at 2:15 P.M.....Connor, J	
22-75	Filed Memo-End. on show cause order of 7-21-75. Trial on the merits is consolidated with & advanced to the hearing on the applica- tion for the preliminary injunction at 4:30 P.M. Wed. 7-23-75. Pending hearing & trial TRO in form set forth in this order to show cause is granted.....So Ordered, MAC MAHON, J m/n	
7-22-75	Filed Bond for undertaking on injunction - \$5,000 - Nat'l Surety Corp.	
7-23-75	<i>Non-jury trial & continued & adjourned to 7-28-75</i>	
7-28-75	<i>Trial con't & concluded. Total 3 days. Judge's Dec.</i>	
7-28-75	Filed summons & Marshall's return. Served: Fashion Associates By: J. Finkelstein 7-22-75	
15-75	Filed Deft's Answer.	GAG
15-75	Filed Pltff's Memorandum on Best Evidence.	
15-75	Filed Pltff's Affdvt by J. N. Palik in support of its motion for pre. inj.	
15-75	Filed Deft's Memo in opposition to plttf's motion for inj. relief.	
15-75	Filed Affdvt of J. Finkelstein in opposition to plttf's motion for TRO and Prel Inj.	
15-75	Filed Deft's Memorandum.	
3-75	Filed Order re plttfs show cause order for a preliminary injunction, & in re hearings & testimony in open Court on the 21st, 23 & 28 of July, 1975, the Court makes the following supplementary findings of fact & conclusions of law, to be read together with those dictated into the record. Ordered, that pending the determination of this action, deft, et al in active par- ticipation or concert are enjoined from using the GG Design. MAC MAHON, J m/n	
7-18-75	Filed transcript of record of proceedings, dated <i>July 21, 23, 28 1975</i>	
0-1-75	Filed Stip & Order extending to 10-15-75 dates for completion of discovery & inspection, submission of Trial Briefs & other papers as ordered in Pre-Trial Order #2.....MAC MAHON, J	
10-20-75	Filed Final Consent Decree & Order that final judgment in favor of plttf & against the deft is granted. Deft, et al is en- joined re connection with anything related to the GG Design trademark....MAC MAHON, J Judgment Ent. 10-21-75, Clerk m/n	
23-76	Filed plttfs affdvts & Show Cause Order re defts contempt of court. Ret. 3-26-76, Rm. 501, at 2:15 P.M.....MAC MAHON, J	
1-76	Filed affdvt of personal service by Leonard Brodsky of show cause order on Matthew Keshishian on 3-17-76.	
23-76	Filed Memo-End. on (76 Civ 1262, CHT) that the defts have been in default at the call of the page in open court on this date as is dictated on the record. Accordingly, plttfs motion to consolidate is granted, plttfs motion for preliminary in- junction is adjourned until 3-26-76, at 2:30 P.M. before Judge Mac Mahon.....So Ordered, TENNEY, J	
3-26-76	Filed affirmation of substituted service of order to show cause re contempt on J. Finkelstein, J. Finkelstein, Agent, E. Finkel- stein & E. Finkelstein, Agent, on 3-23-76 by mail.	
3-23-76	Filed Order for substituted service of show cause order re contempt. MAC MAHON, J.	
3-26-76	Filed Stip & Order for Continuance that the hearings on the Order to Show Cause dtd 3-16-76 which includes consolidation, case #76 Civ 1262 CHT, be put over to 4-16-76, 2:15 P.M., Rm 501. TRO be con't until hearings on SCO on 4-9-76., etc. MAC MAHON, J	

DATE	PROCEEDINGS
4-20-76	Filed deft's affdvt & memo in opposition to plttfs motion for injunctive relief.
4-26-76	Filed Stip & Order for Continuance. Hearing on Show Cause Order dtd 3-16-76, which includes consolidation with (76 Civ 126) be put over to 4-30-76, with TRU continued in effect to the date also.....MAC MAHON, J.
5-4-76	Filed plttfs notice of motion to dismiss counterclaim & for a mor definite statement. Memo of law included. Ret. 5-14-76
5-3-76	Filed Memo-End. on show cause order of 3-18-76. After a full evidenciary hearing, plttfs motion for a prelim. inj. is gra Pltff is to submit a proposed judgment, & detailed findings conclusions not inconsistent with the findings of the court dictated into the record. Submit findings & judgment withir five days.....So Ordered, MAC MAHON, J. m/n
5-3-76	Filed ANSWER, counterclaim & jury demand by defts. RR
5-3-76	Filed deft (Jerome Finkelstein) affdvt
5-3-76	Filed Memo-End. on Show Cause Order of 3-23-76. After a full evidenciary hearing, plttfs motion to adjudge deft in conte is granted. Pltff to submit within 5 days a proposed judgm & detailed findings & conclusions not inconsistent with the findings of the Court so dictated into the record..... So Ordered, MAC MAHON, J. n/m
6-3-76	Filed transcript of record of proceedings, dated 4-30-76
6-9-76	Filed Order adjudging in contempt amending final consent decree & preliminary injunction. Findings of Fact & conclusions of l as indicated. Defts have willfully failed to adhere faithfu to the terms of the Final Consent Decree ent. 10-21-75, & ac this Court finds it equitable to relieve plttff from such Dec by amending same so as to award to plttff damages. It is Orde Adjudged & Decreed that defts purge themselves of their cont by taking the action as indicated, & pay to plttff all profit made or an amount equal to plttfs loss of anticipated profit whichever is greater, from such sales illegally made from 10 through the date of this Court's order herein. File with th Court & the plttff, within 30 days after entry of this decree sworn statement in detail the steps taken to comply therewit Special Master, Douglas F. Eaton, Esq. 745 Fifth Ave., NYC (759-1919) is appointed to take an accounting & determine th amount of monetary damages & profit, with defts to pay any & all fees due such Special Master, & he is to hear & determin the matter & file his report with the Court with all conveni speed & in no event later than 8-16-76. As to the prelimina injunction, defts, et al are enjoined during pendency of thi action from mfg, copying, selling, etc. any merchandise bear the above trademarks.....MAC MAHON, J. Judgment Ent. 6-9-76 Clerk. n/m
7-7-76	Filed defts' Notice of Appeal to USCA from order adj defts in contempt...etc.. ent 6-9-76.....to LADAS, PARRY, VONGER, GOLDSMITH & DESCHAMPS on 7-3-76.
7-14-76	Filed defts Fashion Asso and Hong Kong Quality Knitters' Affekt re: compliance with provisions of judgment ent 10-21-75.
6-23-76	Filed Oath of Special Master, Douglas F. Eaton.
7-10-76	Filed defts memo in opposition to plttfs motion for dismissal of counterclaim.
7-20-76	Filed transcript of record of proceedings dtd 4-30-76

Con't on Page #3

DATE	PROCEEDINGS
7-29-76	Filed Endorsement & Order on motion dtd 5-4-76. Pltff moves to dismiss pursuant to Rule 12(b) defts counterclaim for failure to state a claim upon which relief can be granted. Defs counterclaim alleges harassment. For the reasons indicated, pltffs motion to dismiss defts counterclaim is granted....MAC MAHON, J. n/m
8-4-76	Filed record of transcript of proceedings dtd 7-21, 23, 28-76.
8-6-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.
9-10-76	Filed pltffs notice of motion before Special Master, Douglas F. Eaton, to preclude & for other relief.
9-10-76	Filed affdvt of Jerome Finkelstein re letter of 6-25-76 from Special Ma
9-10-76	Filed affdvt of Jerome Finkelstein re forwarding invoices to pltffs att
9-10-76	Filed affdvt of Jerome Finkelstein in opposition to pltffs motion for additional relief.
9-10-76	Filed affdvt of (James N. Palik) in support of pltffs request for atty fees.
9-10-76	Filed supplementary affdvt of (James N. Palik) in support of pltffs mot to preclude & for other relief.
9-10-76	Filed affdvt of (Douglas F. Eaton), to support application for fees as Special Master.
9-10-76	Filed Special Master's Report.
09-23-76	Filed true copy of U.S.C.A. Order that the Appeal from the Order of 06-08-76 is Dismissed. Clerk, U.S.C.A.
10-12-76	Filed Pltff's motion to confirm the S.M. Report and to direct Entry of Final Judg...ret 10-22-76-2:15PM Rm 706...
1-24-77	Filed Opinion #45548 & Order. Pltff moves to confirm the report of Special Master Douglas F. Eaton, Esq., & we grant the motion & confirm the Special Master's report in all respects. Def object to the Special Master's findings of fact in every instance. We conclude that the Master's findings, are amply supported by the record, & we adopt those findings as our own. For the reasons indicated, we grant pltffs motion to confirm the Master's report in all respects, & approve his fee application in the amt of \$5,875. Settle an appropriate judgment & order, in accordance with the foregoing, within 10 days.....MAC MAHON, J. n/m
1-24-77	Filed Deft's Objections to Special Master's Report.
2-25-77	Filed Memo-End. on motion dtd 10-12-76. Motion granted. See Opinion of this date.....MAC MAHON, J. n/m
2-10-77	Filed Final Judgment #77,273 & Order pursuant to Rule 54(b) that pltff recover of the deft Fashion Associates the sum of \$18,105 with interest at 6%, & of defts Fashions Associates, Inc., Hong Kong Quality Knitters Ltd., & Jerome Finkelstein, jointly & severally the sum of \$2,586 with interest at 6%, & of deft Fashion Assoc Inc., Hong Kong Quality Knitters Ltd., Jerome Finkelstein, Matthew M. Keshishian, Esq., & Krugmen, Chapnick & Grimshaw, Attys for defts, jointly & severally, the sum of \$2,885 with interest at 6%. Defts & the attys for defts shall pay to pltff the above sums within thirty days from the entry of this final judgment.....MAC MAHON, J. Judgement Ent. 2-10-77, Clerk
2-10-77	Filed Order that Douglas F. Eaton, Special Master shall recover of deft Fashion Associates, Hong Kong Knitters, & Jerome Finkelstein, jointly & severally, the sum of \$5,875 with interest at 6%, to be paid by said defts within 20 days after service on their a copy of this Order with notice of its entry...MAC MAHON, J.

AT CONTINUATION SHEET

5a

MAC MAHON, J

ESA INTERNATIONAL

DEFENDANT

FASHION ASSOCIATES, INC.

DOCKET NO 75-3527

PAGE 4 OF 4 PAGES

DATE

NR.

PROCEEDINGS

18-77

Filed defts notice of appeal to the USCA from the Order entered 6-8-76 adjudging defts in contempt, & from the Order entered on 2-9-77, directing payment of Special Master Fees & a Final Judgment. Copy sent to: Ladas Parry ConGehr Goldsmith & Deschamps, 10 Colburn Circle, New York, N.Y.

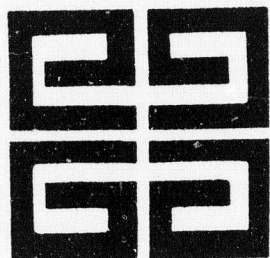
A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

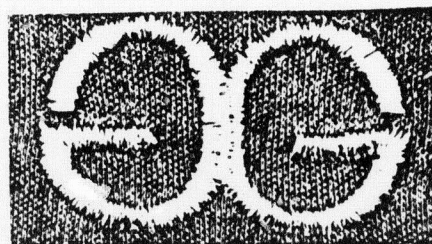
By *[Signature]*
Deputy Clerk

6a

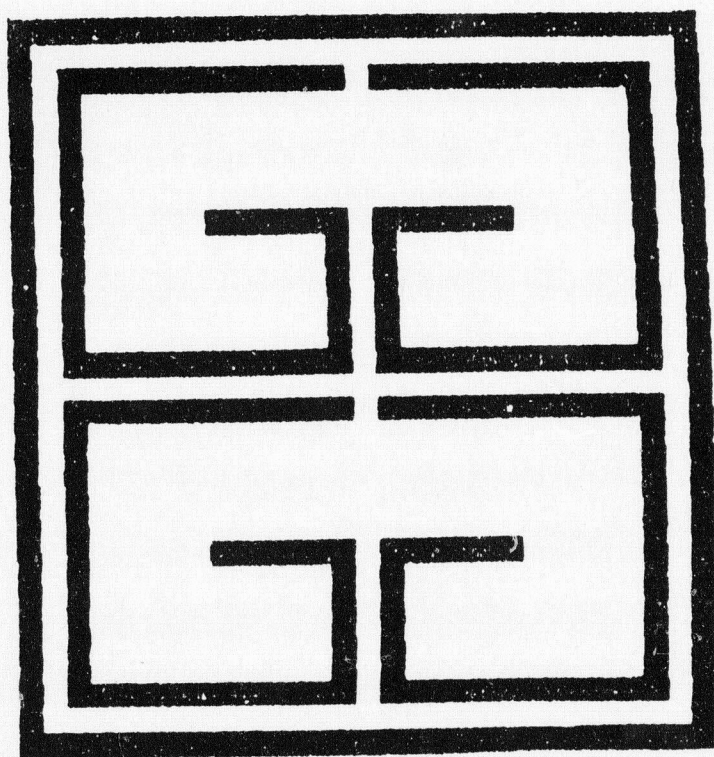
Appendix A-2. Exhibit BZ-1 Affidavit to Bruce Zimberg, RA Document No. 4



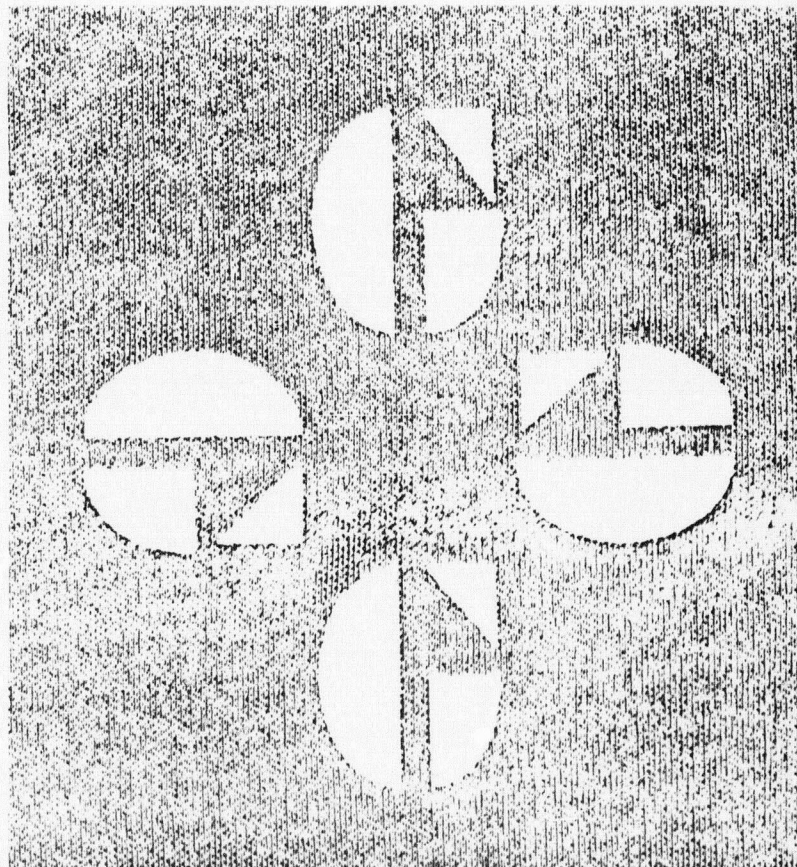
"A"



"C"



"B"



"D"

Appendix A-3. Agreement between Givenchy S.A. and Chesa International, Ltd.
(pp. 7a-8a)

1. Givenchy Label

During the term of this Agreement you shall be entitled to use the label GIVENCHY-GENTLEMEN PARIS and/or GIVENCHY for (CHESA or the quality store in which the Products are being sold) and/or any other label on which we may henceforth specifically agree in a written instrument signed by us.

2. Design

We agree to design each year, at your request, exclusively for you in the licensed territory, a line of each of the above classes of Products (any one or all of which you may accept or reject for inclusion in your line), as follows:

For merchandise to be sold during the Holiday and Cruise season, delivery shall be made not later than December 15th in each year.

For merchandise to be sold during the Spring season, delivery shall be made not later than April 1st of each year.

For merchandise to be sold during the Fall season, delivery shall be made not later than September 1st of each year.

In addition, you may submit to us for approval, such number of designs of your choice as you may desire for any of these Products.

You agree to submit all the styles not furnished by us and substantially all of the patterns and fabrics which you desire to use in your manufacture and sale of the Products but need not submit the colors thereof. We shall have four (4) weeks after your airmailing said styles, and two (2) weeks after your airmailing said patterns and fabrics to approve same and in the event you do not receive any response within three (3) business days after the expiration of such period, we shall be deemed to have approved the materials submitted. Exceptionally, when pressing circumstances warrant it, you may submit one or several patterns for approval by delivering them against receipt to Ruth Hammer or her authorized representative with a letter setting forth said circumstances and containing a request for a response by cable within ten (10) business days from such delivery.

It is understood and agreed that occasional accidental failures in good faith on your part to submit a pattern or fabric shall not be considered a material breach or violation of the terms of this Agreement.

Appendix A-3 (cont)

To substantiate the delivery of, and the approval of materials submitted by you to us, a procedure will be established by both of us which will serve as a verification of the shipment of said materials and the receipt of the required approval.

For the purpose of this Agreement, (i) the word "style" shall be deemed to refer more particularly to the cut, features and general appearance of the Product concerned, and does not relate to its pattern or fabric.

(ii) The word "pattern" shall refer to the fabric(s) used in the manufacture of said Product and cover the visual effect of such fabric other than the composition of its fibers, its weave or knit.

(iii) The word "fabric" shall refer to the composition, weave or knit of the fibers of the material(s) used in said Product.

(iv) The word "designs" shall consist of the combination of style, pattern and fabric as hereabove defined.

3. Exclusivity

As indicated hereinabove, you shall have the right during the term, of this Agreement to the use of the GIVENCHY labels as defined in Paragraph 1 with respect to the licensed Products in the licensed territory, and such right shall be exclusive to you except in the Virgin Islands, but shall be limited to high quality products manufactured from the designs furnished by us, approved or deemed approved by us provided above, or not approved due to an accidental failure on your part to submit a pattern or fabric of any Product. You agree to take every reasonable precaution to prevent the unauthorized use of any labels bearing the name GIVENCHY in any combination or form. You agree not to use the name GIVENCHY in any combination or form in your corporate or business name.

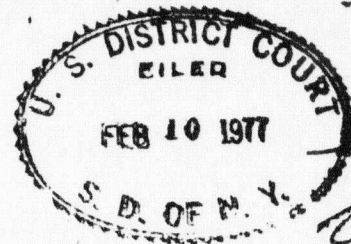
You do further agree that you will not reproduce or use the distinguishing features or the patterns created by us or approved by us or deemed to be approved by us for the manufacture and sale of products under any label other than ours, unless with our prior written consent; except that no consent shall be required for the sale of Products with such (illegible) patterns to better department stores and to haberdashers known to sell high quality merchandise requesting the use of their own labels on said Product. In addition, nothing herein contained shall prevent you from removing the labels or inserting a private label in normal sales in the regular course of trade of "close-out" merchandise at the end of a season.

9a

A-4 SPECIAL MASTER'S REPORT DATED SEPTEMBER 9, 1976

(NOT REPRODUCED HERE, DOCUMENT NO. RA 38)

A-5 FINAL JUDGMENT (pp. 10a-11a)
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK



 CHESA INTERNATIONAL, LTD.,

Plaintiff,

v.

FASHION ASSOCIATES, INC.,
 HONG KONG QUALITY KNITTERS LTD.,
 JEROME FINKELSTEIN AND
 ETHEL FINKELSTEIN,

Defendants.

75 CIV 3522 LFM

FINAL JUDGMENT

77,273

This Court having granted the plaintiff's Motion to Confirm the Special Master's Report by Opinion dated January 24, 1977, and having directed by Order, the entry of a Final Judgment, now, therefore, it is pursuant to Rule 54(b), of the F.R.Civ.P., that there being no just reason for delay, it is

ORDERED, ADJUDGED AND DECREED:

1. That plaintiff shall recover of the defendant Fashion Associates, Inc. the sum of \$18,105.00 with interest thereon at the rate of six per centum per annum as provided by law;
2. That plaintiff shall recover of the defendants Fashion Associates, Inc., Hong Kong Quality Knitters Ltd. and Jerome Finkelstein, jointly and severally, the sum of \$2,586.00 with interest thereon at the rate of six per centum per annum as provided by law;
3. That plaintiff shall recover of the defendant Fashion Associates, Inc., defendant Hong Kong Quality Knitters Ltd., defendant Jerome Finkelstein, Matthew M. Keshishian, Esq., and Krugman Chapnick & Grimshaw, Attorneys for Defendants, jointly and severally, the sum of \$2,885.00 with interest thereon at the rate of six per centum per annum as provided by law; and

4. That the defendants and the attorneys for
defendants shall pay to plaintiff the above sums within thirty days
from the entry of this Final Judgment.

New York, N.Y.
February 9, 1977

Lloyd F. MacMahon

JUDGMENT ENTERED

United States District Judge
for the Southern District of New York

RM

DATED: New York, New York

February 10, 1977

Raymond F. Burglandt
Clerk

United States District Court
FOR THE
Southern District of New York

CHESA INTERNATIONAL, LTD.,

Plaintiff,

-against-

FASHION ASSOCIATES, INC.,
HONG KONG QUALITY KNITTERS
LTD., JEROME FINKELSTEIN
and ETHEL FINKELSTEIN,

Defendants.

OPINION

LLOYD F. MacMAHON, D. J.

75 Civ. 3522 (LFM)

A-6 - OPINION OF HON. LLOYD F. MacMAHON, D.J.
(pp. 12a-23a)

12a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CHESA INTERNATIONAL, LTD.,

Plaintiff,

OPINION

-against-

75 Civ. 3522 (LFM)

45548

FASHION ASSOCIATES, INC.,
HONG KONG QUALITY KNITTERS
LTD., JEROME FINKELSTEIN
and ETHEL FINKELSTEIN,

Defendants.
-----x

APPEARANCES:

Ladas, Parry, Von Gehr,
Goldsmith & Deschamps
New York, N.Y.
Attorneys for Plaintiff
By: Paul B. Morofsky,
James N. Palik and
Robert Alpert, Esqs.

Robert Rattet, Esq.
New York, N.Y.

-and-

Krugman, Chapnick & Grimshaw
Paterson, N.J.
Attorneys for Defendants
By: Matthew M. Keshishian, Esq.

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
JAN 21 4 36 PM '77

MacMAHON, District Judge.

Plaintiff moves, pursuant to Rule 53(e)(2), Fed.R.Civ.P., to confirm the report of Special Master Douglas F. Eaton, Esq. We grant the motion and confirm the Special Master's report in all respects.

On July 28, 1975, we found that defendant Fashion Associates, Inc. ("Fashion Associates") had infringed the Givenchy "G" emblem, a trademark licensed to plaintiff, and a preliminary injunction was issued. On October 21, 1975, we issued a permanent injunction on consent enjoining Fashion Associates and persons in active concert with it from using the Givenchy "G" emblem or colorable imitation of it. On June 8, 1976, we found that Fashion Associates, Hong Kong Quality Knitters Ltd., Jerome Finkelstein and Ethel Finkelstein had violated the order of October 21, 1975 and were in contempt of court. We also amended the judgment of October 21, 1975 so as to provide for damages which plaintiff had conditionally waived, and we appointed the Special Master to determine plaintiff's damages.

The Special Master found that plaintiff had sustained damages of \$18,105.00 based on defendant Fashion Associates' profits on sales of T-shirts bearing the "G" emblem prior to October 21, 1975, plus \$2,586.00 based on all defendants' profits on their contemptuous sales from October 21, 1975 through June 8, 1976. The Special Master also recommended the imposition of sanctions under Rule 37(b)(2)(B) and the award of certain of plaintiff's attorneys' fees in the amount of \$2,885.00.

Defendants object to the Special Master's findings of fact in every instance "because they are based on a misapprehension of the evidence." Rule 53(e)(2) plainly provides, however, that: "In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous." We conclude that the Master's findings here, far from being "clearly erroneous," are amply supported by the record, and we adopt those findings as our own.

The Special Master's report and the record of proceedings before him are replete with references to defendants' dilatory, obstructive and generally uncooperative behavior on discovery matters. The Master

found that defendants had agreed, and were ordered, to provide information concerning their embroidering and customers, all documents supporting any element of cost or deduction claimed by defendants, and certain other relevant information.

Defendants never did provide all the information sought, and what they did eventually produce was after significant delay and, as the Master found, without adequate excuse. The material sought was neither voluminous nor difficult to produce, and the delaying tactics engaged in by defendants upset and hindered the orderly and expeditious resolution of this matter.

In response to defendants' foot-dragging and evasive attitude on discovery, plaintiff was forced to move for sanctions under Rule 37, Fed.R.Civ.P. Under Rule 53(d)(2), parties who fail, without adequate excuse, to appear or provide evidence in Special Master proceedings, are subject to the same "consequences, penalties, and remedies provided in Rules 37 and 45." The Master found, and we agree, that there was no adequate excuse for the delay and that defendants

17a

should not be allowed to introduce evidence of cost or deduction in computing their profits. Rule 37(b)(2)(B), Fed.R.Civ.P.

Although not relevant to their failure to produce information on cost or deduction, defendants contend that their non-cooperation on discovery was justified. They now contend that the motion for sanctions should not have been granted, primarily because the requirement of information as to all of defendants' embroiderers and customers, regardless of their involvement with the Givenchy "G" emblem, was overly broad and would confer an unfair competitive advantage on plaintiff.

We note initially that the Master's order to produce this information included a protective provision that the data would be for the use of plaintiff's attorneys only and could not be divulged to their client or anyone not in the employ of the law firm. Under a protective order, the names of customers is a proper subject for discovery. Ia Chemise Lacoste v. General Mills, Inc., 53 F.R.D. 596, 605 (D. Del. 1971), aff'd

on other issues, 487 F.2d 312 (3d Cir. 1973).. The same principle applies to the embroiderers here, and we believe the protective provision to be entirely adequate for the protection of defendants' competitive position.

Secondly, we note that defendants failed or refused to apply to the Master or to the court for any other protective order they deemed necessary, pursuant to Rule 26(c), Fed.R.Civ.P.

Finally, it is significant that plaintiff's need for broad discovery was precipitated by defendants' own actions and bookkeeping practices. Defendants continually asserted that their invoices and records referred only to various types of women's clothing shipped to customers and were not specific as to the emblems embroidered on the clothing. Defendants were only willing to identify those customers to whom defendants could "recall" selling items with the Givenchy emblem, and even then they supplied invoices relating to customers of whom plaintiff was already aware. Furthermore, when confronted with evidence obtained by plaintiff directly from a customer, defendants attempted to deceive the

Special Master and plaintiff by representing as genuine a fabricated invoice "reconstructed" from Jerome Finkelstein's memory.

Under these circumstances, it was relevant and necessary to require information as to all of defendants' embroiderers and customers so that plaintiff's attorneys could, under the protective order, attempt a meaningful investigation and analysis of defendants' sales of garments with the Givenchy emblem. It was also relevant and necessary to require production of information about Finkelstein's participation in other businesses, since the injunction applied not only to defendants but also to their "attorneys and all persons in active concert and/or participation with them. . . ." In view of Finkelstein's violation of the order of October 21, 1975 through the formation of Hong Kong Quality Knitters Ltd., of which he was admittedly the sole employee, it was appropriate and necessary to inquire into the possibility of other such attempts.

In any event, there was no excuse for failing to produce the cost or deduction data forthwith. Accordingly, we agree with the Special Master that the

preclusion of defendants' evidence of cost or deduction was warranted under the circumstances, and the Master's imposition of such a sanction was correct.

In addition, the Special Master recommended the award of \$2,885.00 for plaintiff's attorneys' fees occasioned by defendants' conduct. We concur with the Special Master's finding that the award of counsel fees is appropriate here, for defendants' failure to comply with the Special Master's order was not "substantially justified," nor do other circumstances "make an award of expenses unjust." Rule 37(b)(2), Fed.R.Civ.P. We also affirm the Special Master's finding that defendants' attorney, Matthew Keshishian, should be held jointly and severally liable for the expense award, because he was the attorney advising the party failing to obey the order, because the Master found that he "contributed significantly to the pattern of delay and defiance," and because there appear no other circumstances making such an award unfair or unjust. Rule 37(b), Fed.R.Civ.P.

We turn now to plaintiff's proof and the Special Master's findings on damages.

Defendants eventually produced, under the Special Master's direction, eleven invoices purportedly representing every sale that possibly included items with the Givenchy emblem or imitation. Plaintiff chose to rely on those invoices, plus one other obtained by plaintiff, for proof of defendants' profits. The Special Master included ten of these twelve invoices in the computation.

Defendants contend that the invoices referred only to various types of women's garments, and not all of those contained the Givenchy emblem. Defendants could offer only a vague recollection that approximately 25% of the invoiced articles contained the Givenchy emblem. This contention is disposed of by the well-known and ancient doctrine that when a party frustrates proof of damages, either by withholding facts or through inaccurate record-keeping, any doubts about the actual assessment of damages will be resolved against that party, and the fact-finder may calculate damages at the highest reasonably ascertainable value. Westinghouse Elec. & Mfg. Co. v. Wagner Elec. & Mfg. Co., 225 U.S. 606 (1912); Deering, Mfg. Co. v. Gilbert,

269 F.2d 191 (2d Cir. 1959); Shapiro, Bernstein & Co.
v. Remington Records, Inc., 265 F.2d 263, 271-73 (2d
Cir. 1959) (Burger, C.J.). See also Armory v. Delamirie,
1 Strange 505, 93 Eng. Rep. 664 (1722).

Accordingly, the Special Master was correct
in computing defendants' profits on the basis of those
sales which possibly infringed plaintiff's mark, where
defendant was unable to elicit satisfactory evidence
that not all those sales were infringing. And since
defendants refused to produce, and later were precluded
from introducing, evidence of cost or deduction, defend-
ants are liable for the full invoiced sales prices. We
find, as the Special Master found, that those sales
amounted to \$18,105.00 prior to October 21, 1975, and
\$2,586.00 between October 21, 1975 and June 8, 1976.

We also approve as fair, reasonable and ade-
quate the Special Master's application for fees in the
total amount of \$5,875.00, representing 58.75 hours at
the hourly rate of \$100.00, to be borne by defendants.
In answer to defendants' objection to this amount, we
note that the Master chose not to charge for considerable

23a

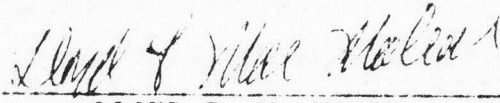
amounts of his time, and that the figure would undoubtedly have been much lower but for defendants' obstructive conduct, for which they have only themselves to blame.

Accordingly, we grant plaintiff's motion to confirm the Special Master's report in all respects, and we approve the Special Master's fee application in the amount of \$5,875.00.

Settle an appropriate judgment and order, in accordance with the foregoing, within ten (10) days.

Dated: New York, N. Y.

January 24, 1977



LLOYD F. MacMAHON
United States District Judge

COURT OF APPEALS
SECOND CIRCUIT

CHESA INTERNATIONAL, LTD.,
Plaintiff-Appellee,

- against -

FASHION ASSOCIATES, INC., HON KONG QUALITY
KNITTERS, LTD: AND JEROME FINKELSTEIN:
Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1715 Lacombe Avenue; Bronx, New York

That on the 12th day of April, 19 77 at 10 Columbus Circle
New York, N. Y.

deponent served the annexed

upon

Revised Appendix and Brief

Paul Marofsky
c/o Lads Parry

(100-239)

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 12th
day of April 19 77

Robert T. Brin

Victor Ortega
Victor Ortega

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

FEDERAL COURT
SECOND CIRCUIT

CHESA INTERNATIONAL, LTD,
Plaintiff-Appellee,

- against -

FASHION ASSOCIATES, INC., : HON KONG QUALITY
KNITTERS, LTD: AND JEROME FINKELSTEIN:
Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1715 Lacombe Avenue, Bronx, New York

That on the 5th day of ~~April~~ April 19 77 at ~~XXXX~~ 10 Columbus Circle
New York, New York

deponent served the annexed

Appendix & Brief

upon
Mr. Paul Marofsky
c/o Ladas Parry VonGehr Goldsmith &
Deschamps, Esqs.

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 5th
day of April, 19 77

Victor Ortega

Victor Ortega

Robert T. Brin
ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

